

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	:	CFTC DOCKET NO. 01-04
	:	
Isaac Fleyshmakher	:	ORDER MAKING FINDINGS
1530 North Dearborn Street	:	AND IMPOSING REMEDIAL
Chicago, Illinois 60610,	:	SANCTIONS AS TO RESPONDENT
	:	
Respondent.	:	
	:	

I.

On November 29, 2000, the Commodity Futures Trading Commission (“Commission”) filed a three-count Complaint and Notice of Hearing (“Complaint”) against Isaac Fleyshmakher (“Respondent” or “Fleyshmakher”). The Complaint charged that Fleyshmakher violated Sections 4b(a)(i), 4b(a)(iii), 4o(1), and 4m(1) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 6b(a)(i), 6b(a)(iii), 6o(1), and 6m(1) (1994).¹

II.

In order to dispose of the allegations and issues raised in the Complaint, Fleyshmakher has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Without admitting or denying any of the allegations of the Complaint or the findings herein, and prior to any adjudication on the merits, Fleyshmakher acknowledges service of this Order Making Findings and Imposing Remedial Sanctions (“Order”). Respondent consents to the use

¹ The Act was amended by the Commodity Futures Modernization Act of 2000, Appendix ____ to Pub. L. No. 106-554 (December 21, 2000). This amendment, however, resulted in no material changes to any of the sections of the Act that the Complaint alleges Fleyshmakher violated.

of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.²

III.

The Commission finds that:

A. SUMMARY

Fleyshmakher committed fraud in connection with the operation of two separate investment pools. More specifically, from July 1998 through February 2000 (the “relevant period”), Fleyshmakher solicited investors for and managed two Illinois limited partnerships, New Frontier L. P. (“New Frontier”) and New Millennium L. P. (“New Millennium”). Fleyshmakher defrauded New Frontier investors by transferring \$10,000 of their funds, which had been solicited to trade securities, into a commodity trading account, without their knowledge and consent. By trading commodity futures with New Frontier funds, Fleyshmakher engaged in unauthorized trading; and by transferring, trading and failing to return those funds to New Frontier investors, he misappropriated the funds. Fleyshmakher defrauded New Millennium investors by making false oral and written statements about the performance record of the New Millennium pool when soliciting investors. He also misappropriated New Millennium funds by retaining service fees to which he was not entitled because he performed no legitimate trading services for investors.

² Respondent does not consent to the use of the Offer or this Order as the sole basis for any other proceeding brought by the Commission other than a proceeding to enforce the terms of this Order, nor does Respondent consent to the use of the Offer, or the findings in the Order consented to in the Offer, by any other person or entity in this or any other proceeding. The findings made in the Order are not binding on any other person or entity named as a defendant or respondent in any other proceeding.

B. RESPONDENTS

Respondent Isaac Fleyshmakher is 32 years old and resides at 1530 North Dearborn Street, Chicago, Illinois 60610. He has never been registered with the Commission in any capacity.

C. FACTS

As sole general partner of New Frontier and New Millennium, Fleyshmakher operated two separate investment pools, New Frontier and New Millennium, during the relevant period. Fleyshmakher did not register with the Commission as a commodity pool operator (“CPO”) for either the New Frontier or New Millennium pools. According to New Frontier’s Limited Partnership Agreement (“L. P. Agreement”), dated July 1, 1998, the sole purpose of the partnership was securities trading and investment. The stated purpose of New Millennium, according to its L. P. Agreement, was broader and encompassed securities and commodities trading and investment.

1. The New Frontier Pool.

From July 1998 through at least December 1999, Fleyshmakher solicited and accepted at least \$330,000 from at least twelve investors for participation units in New Frontier. Fleyshmakher initially deposited all of the funds he accepted into New Frontier’s bank account. Thereafter, he transferred a portion of the funds to various securities trading accounts and used those funds to trade securities.

On October 27, 1999, without the knowledge or consent of the New Frontier investors, Fleyshmakher amended New Frontier’s L. P. Agreement to allow the partnership to “enter into a Customer Agreement with any duly registered futures commission merchant, chosen by the

Partners, for the purpose of purchasing and selling commodity futures contracts and options on commodity futures contracts, and related commodity business.” Such an amendment was not authorized under the terms of New Frontier’s L. P. Agreement without the consent of the limited partners. On the same day of the purported amendment, namely, October 27, 1999, Fleyshmakher opened a commodity futures trading account at a registered futures commission merchant (“FCM”).

Fleyshmakher placed a total of \$10,000 of New Frontier funds in the New Frontier account at the FCM October 28, 1999. He lost approximately \$4,000 trading commodity futures and deposited the remaining \$6,000 into New Frontier’s bank account on December 20, 1999. Thereafter, Fleyshmakher transferred funds from New Frontier’s bank account to third parties, who were unrelated to the pool, thereby misappropriating the \$6,000 that he had invested in the commodity account at the FCM. With the exception of the \$10,000 placed into the trading account, Fleyshmakher invested no other New Frontier funds in commodity trading. New Frontier investors, however, sustained additional losses as a result of Fleyshmakher’s conduct in connection with other non-commodity investments.³

2. The New Millennium Pool

From late October 1999 through February 2000, Fleyshmakher solicited and accepted at least \$102,500 from eight investors for participation units in New Millennium. Fleyshmakher deposited all of the funds he accepted into New Millennium’s bank account. Unlike the original

³ This fact is relevant to Fleyshmakher’s obligation to pay a contingent civil monetary penalty as set forth at paragraph 4 of the Order, p. 11 infra.

New Frontier partnership agreement, the stated purpose of the New Millennium partnership agreement included commodities trading and investment.

Fleyshmakher fraudulently solicited investors for New Millennium by making misrepresentations about New Millennium's performance record. Specifically, Fleyshmakher sent prospective investors a false performance report which claimed that an initial investment of \$30,000 in New Millennium on December 12, 1996 would have increased to \$180,345 by August 19, 1999. New Millennium had no performance record, since the pool had never traded either securities or commodity futures. These were material misrepresentations upon which an ordinary investor would reasonably rely in deciding to invest.

On December 23, 1999, Fleyshmakher opened a commodity trading account in New Millennium's name at an FCM, with an initial deposit of \$34,000. On December 30, 1999, Fleyshmakher deposited an additional \$39,000 into the New Millennium commodity trading account. On February 1, 2000, Fleyshmakher closed the account, without entering into any commodity futures trades, and re-deposited the approximately \$73,000 into New Millennium's bank account.

On February 4, 2000, Fleyshmakher opened a commodity trading account in New Millennium's name at another registered FCM, with an initial deposit of \$93,000. On February 16, 2000, Fleyshmakher closed the account, once again without entering into any commodity trades, and re-deposited \$93,000 into New Millennium's bank account. Thereafter, Fleyshmakher repaid the eight investors a total of \$100,270, retaining \$2,230 of their collective funds as "service fees." Fleyshmakher was not entitled to these fees because he performed no legitimate trading services for investors.

D. VIOLATIONS OF THE ACT AND COMMISSION REGULATIONS

1. Fleyshmakher Cheated, Defrauded and Deceived Pool Participants.

Section 4b(a)(i) of the Act prohibits cheating or defrauding or attempting to cheat other persons in connection with commodity futures trading and Section 4b(a)(iii) of the Act prohibits willfully deceiving or attempting to deceive other persons by any means whatsoever in regard to any commodity order or contract or the disposition or execution of any such order or contract.

Fleyshmakher violated Sections 4b(a)(i) and 4b(a)(iii) of the Act in a variety of ways. By transferring, trading commodity futures with and failing to return New Frontier funds to investors, Fleyshmakher engaged in unauthorized trading and misappropriated their funds. CFTC ex rel. Kelley v. Skorupskas, 605 F. Supp. 923, 932-33 (E.D. Mich. 1985) (defendant defrauded pool investors by soliciting investors' funds for commodity trading, not trading those funds, and disbursing investor funds to other investors, herself and her family); In re Interstate Securities Corp., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,295 at 38,955 (CFTC June 1, 1992) (unauthorized trading falls within Section 4b's prohibition and occurs when trades are executed without the customer's permission or contrary to the customer's trading instructions).

Fleyshmakher also misrepresented and omitted material facts in the solicitation of commodity future interests for New Millennium. In re R&W Technical Services, Ltd., [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 at 47,741 (CFTC Mar. 16, 1999) (respondents violated Section 4b(a)(iii) by making material misrepresentations in advertisements and promotional materials), aff'd in part, rev'd in part, R&W Technical Services, Ltd. v. CFTC, 205 F.3d 165 (5th Cir. 2000), cert. denied, 2000 WL 694187 (U.S. Oct. 2, 2000). See also Hirk

v. Agri-Research Counsel Inc., 561 F.2d 96, 103-04 (7th Cir. 1977) (fraudulent conduct can occur during the solicitation of commodity investments as well as during the handling of commodity investments). Fleyshmakher also prepared and distributed false statements in the New Millennium performance report by stating that actual trades had produced profits, when in fact, no actual trading had occurred. CFTC v. AVCO Financial Corp., 28 F. Supp.2d 104, 114 (S.D.N.Y. 1998), aff'd in relevant part sub nom. Vartuli v. CFTC, 200 U.S. App. LEXIS 23720 (2d Cir. Sept. 22, 2000). In addition, he misappropriated a portion of New Millennium funds by retaining them as “service fees” to which he was not entitled because he performed no legitimate trading services for investors. In re Jerry W. Slusser, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48, 313 (CFTC July 19, 1999) (respondents violated Section 4b of the Act by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of the investors), aff'd in part, rev'd in part, Slusser v. CFTC, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,124 at 49,861 (7th Cir. 2000).

2. As a CPO, Fleyshmakher Cheated and Defrauded Pool Participants By Use Of The Mails To Engage In Activities Which Operated As A Fraud Upon Them.

A CPO is “any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market.” Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (1994), as amended by the Commodity Futures Modernization Act of 2000, Appendix E to Pub. L. No. 106-554 (December 21, 2000). Fleyshmakher acted as a CPO of the New Millennium commodity pool throughout the relevant

time in that he solicited, accepted and received funds from New Millennium investors for the purpose of trading commodity futures. By trading commodity futures with New Frontier funds that he had accepted, Fleishmakher became a CPO with respect to that pool also.

Section 4o(1)(A) of the Act makes it unlawful for a CPO to employ any device, scheme or artifice to defraud any participant or prospective participant by use of the mails or any means or instrumentality of interstate commerce. Section 4o(1)(B) of the Act prohibits a CPO from directly or indirectly engaging in any practice or course of business which operates as a fraud or deceit upon any client or participant by the use of the mails or any means or instrumentality of interstate commerce. The same conduct that constitutes violations of Section 4b can constitute violations of Section 4o(1). R&W, ¶ 27,582 at 47,745. See also Hirk, 561 F.2d at 103-04 (fraudulent inducement covered by both Sections 4b and 4o of the Act.). Here, too, by virtue of the same fraudulent acts and misrepresentations discussed above, Fleishmakher violated Section 4o(1) of the Act.

3. Fleishmakher Violated Section 4m(1) by Failing to Register as a CPO.

Section 4m(1) of the Act makes it unlawful for any commodity pool operator, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a commodity pool operator.

Fleishmakher made use of the mails and other means or instrumentalities of interstate commerce in connection with his business of operating New Frontier and New Millennium. While Commission Regulation 4.13 provides for an exemption from CPO registration under certain circumstances, Fleishmakher does not qualify for any exemption. Thus, Fleishmakher violated Section 4m(1) by failing to register as a CPO.

IV.

OFFER OF SETTLEMENT

Fleyshmakher has submitted an Offer of Settlement in which, without admitting or denying the findings herein, he acknowledges service of this Order and admits the jurisdiction of the Commission with respect to the matters set forth in this Order; waives: (1) the service and filing of a complaint and notice of hearing; (2) a hearing and all post-hearing procedures; (3) judicial review by any court; (4) any objection to the staff's participation in the Commission's consideration of the Offer; (5) all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-232, 110 Stat. 862-63, and part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq. (2000), relating to, or arising from this action; and (6) any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

The Respondent stipulates that the record basis on which the Order is entered shall consist solely of the findings in this Order to which he has consented in the Offer. Fleyshmakher also consents to the use of the findings contained in this Order, in this proceeding and in any other proceedings brought by the Commission or to which the Commission is a party. The Respondent consents to the Commission's issuance of this Order, which makes findings as set forth herein and orders that: (1) the Respondent cease and desist from violating the provisions of the Act he is found to have violated; (2) the Respondent be permanently prohibited from trading on or subject to the rules of any contract market, and directs all contract markets to refuse him trading privileges, beginning the third Monday after the date of this Order; (3) Fleyshmakher pay

a total of \$12,230 restitution to defrauded investors, in accordance with the terms set forth below; (4) Fleyshmakher pay a contingent civil monetary penalty (“CMP”) of up to \$55,000 pursuant to a ten year payment plan whose provisions shall be monitored by National Futures Association (“NFA,” hereafter referred to as “Monitor”). Provided, however, that if Fleyshmakher can verify to the Monitor’s satisfaction that he has paid restitution, in any calendar year, to any New Frontier investor listed on Exhibit A to his Offer, who has sustained losses as a result of Fleyshmakher’s conduct in connection with non-commodity investments, his annual civil monetary payment (“Annual CMP Payment”) shall be the difference between the amount of the Annual CMP Payment calculated pursuant to the income based schedule set forth in Section VI, paragraph 4 below, and the amount he paid in restitution. Should the amount of restitution paid by Fleyshmakher equal or exceed the amount of the Annual CMP Payment owed pursuant to the income based schedule, an Annual CMP Payment shall not be owed; and (5) the Respondent comply with his undertakings as set forth in the Offer and incorporated in this Order: (a) never to seek registration or exemption from registration with the Commission and never to engage in any activity requiring registration or exemption from registration and (b) not to take any action or make any statement denying, directly or indirectly, any statement in this Order or creating or tending to create the impression that the Order is without a factual basis.

V.

FINDING OF VIOLATIONS

Solely on the basis of Fleyshmakher’s consent, as evidenced by the Offer, and without any adjudication on the merits, the Commission finds that Fleyshmakher violated Sections

4b(a)(i), 4b(a)(iii), 4o(1), and 4m(1) of the Act, 7 U.S.C §§ 6b(a)(i), 6b(a)(iii), 6o(1), and 6m(1) (1994).

VI.

ORDER

Accordingly, **IT IS HEREBY ORDERED THAT:**

1. Fleyshmakher shall cease and desist from violating Sections 4b(a)(i), 4b(a)(iii), 4o(1), and 4m(1) of the Act, as amended by the Commodity Futures Modernization Act of 2000, Appendix _ to Pub. L. No. 106-554 (December 21, 2000);
2. Fleyshmakher shall be permanently prohibited from trading on or subject to the rules of any contract market, and all contract markets shall refuse Fleyshmakher trading privileges, beginning on the third Monday after the date of this Order;
3. Fleyshmakher pay restitution in the amount of Ten Thousand Dollars (\$10,000), to twelve individual participants in New Frontier and Two Thousand-Two Hundred and Thirty Dollars (\$2,230), to eight individual participants in New Millennium. Within 10 business days of the date of this Order, Fleyshmakher shall make payments totaling \$12,230 to participants as specified in Exhibit A, attached to Fleyshmakher's Offer, and provide copies of the checks to Scott R. Williamson, Acting Deputy Regional Counsel of the Commission's Division of Enforcement, or his successor, 300 South Riverside Plaza, Suite 1600 North, Chicago, Illinois 60606;
4. Fleyshmakher pay a contingent civil monetary penalty in the amount of up to Fifty-Five Thousand Dollars (\$55,000) pursuant to a payment plan. Fleyshmakher shall make an Annual CMP Payment as directed by a monitor designated by the Commission (the "Monitor")

on or before July 31 of each calendar year, starting in calendar year 2001 and continuing for ten years (or until the civil monetary penalty is paid in full, if that happens first).⁴

Fleyshmakher shall make each such Annual CMP Payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Fleyshmakher and the name and docket number of the proceeding; Fleyshmakher shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

The amount of Fleyshmakher's Annual CMP Payment shall consist of a portion of (1) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by Fleyshmakher during the course of the preceding calendar year, plus (2) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets received by Fleyshmakher during the course of the preceding calendar year. The Annual CMP Payment will be determined as follows:

⁴ Fleyshmakher's ten year CMP period shall run from January 1, 2001 through December 31, 2010. Annual CMP payments for a calendar year shall take place by July 31 of the following year. Therefore, the first Annual CMP payment will occur on or before July 31, 2002 and the final Annual CMP payment for the year 2010 will occur on or before July 31, 2011.

Where Adjusted Gross Income plus Net Cash Receipts Total:	Percent of Total to be paid by Fleyshmakher is:
Up to \$25,000	0%
\$25,000 - \$50,000	20% of the amount above \$25,000
\$50,000- \$100,000	\$5,000 plus 30% of the amount between \$50,000 and \$100,000;
Above-\$100,000	\$20,000 plus 40% of the amount over \$100,000.

Provided, however, that if Fleyshmakher can verify to the Monitor's satisfaction that he has paid restitution, in any calendar year, to any New Frontier participant listed on Exhibit A, who has sustained losses as a result of Fleyshmakher's conduct in connection with non-commodity investments, his Annual CMP Payment shall be the difference between the amount of the Annual CMP Payment calculated pursuant to the income-based schedule set forth above and the amount he paid in restitution. Should the amount of restitution paid by Fleyshmakher equal or exceed the amount of the Annual CMP Payment owed pursuant to the income-based schedule, an Annual CMP Payment shall not be owed that calendar year.

5. In the event that Fleyshmakher does not make payments as directed in paragraph 4, above, the Commission may bring a proceeding or an action to enforce compliance with this Order and at its option may seek payment of the unpaid Annual CMP Payment(s) or immediate payment of the entire amount of the civil monetary penalty required by paragraph 4. The only issue Fleyshmakher may raise in defense of such enforcement action is whether Fleyshmakher has made the Annual CMP Payment(s) as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Annual CMP Payments, due and owing

pursuant to paragraph 4, above, or any portion thereof, or any acceptance by the Commission of partial payment of the Annual CMP Payments made by Fleyshmakher, shall not be deemed a waiver of Fleyshmakher's obligation to make further payments pursuant to the payment plan, or a waiver of the Commission's right to seek to compel payments of the remaining balance of the civil monetary penalty assessed against Fleyshmakher.

6. The Commission notes that an order requiring immediate payment of the civil monetary penalty against Fleyshmakher would be appropriate in this case, but does not impose it based upon Fleyshmakher's financial condition. Fleyshmakher acknowledges that the Commission's acceptance of the Offer is conditioned upon the accuracy and completeness of the sworn Financial Statement and other evidence Fleyshmakher has provided regarding his financial condition. Fleyshmakher consents that if at any time following entry of this Order, the Division of Enforcement ("Division") of the Commission obtains information indicating that Fleyshmakher's representations concerning his financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect at the time they were made, the Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Fleyshmakher provided accurate and complete financial information at the time such representations were made; (2) require immediate payment of the full amount of the civil monetary penalty required in paragraph 4 above; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if Fleyshmakher's Offer had not been accepted. No other issues shall be considered in connection with this petition other than whether the financial information provided by Fleyshmakher was fraudulent, misleading, inaccurate or incomplete in any material respect, and whether any additional remedies should be

imposed. Fleishmakher may not, by way of defense to any such petition, contest the validity of or, or the findings in, this Order, assert that payment of a civil monetary penalty should not be ordered, or contest the amount of the civil monetary penalty to be paid. If in such proceeding, the Division petitions for, and the Commission orders, payment of less than the full amount of the civil monetary penalty, such petition shall not be deemed a waiver of Fleishmakher's obligation to pay the remaining balance of the civil monetary penalty assessed against him, pursuant to the payment plan; and

7. Fleishmakher shall comply with the following undertakings as set forth in his Offer:

A. Reporting/Disclosure Requirements to be Reviewed by Monitor. Fleishmakher shall provide his sworn financial statement to the Monitor on June 30 and December 31 of each calendar year, starting on June 30, 2001, and continuing through and including June 30, 2011.

The financial statement shall provide:

- i. a true and complete itemization of all of Fleishmakher's rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;
- ii. an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Fleishmakher over the preceding six-month interval; and
- iii. a detailed description of the source and amount of all of Fleishmakher's income or earnings, however generated.

Fleishmakher shall also provide the Monitor with complete copies of his signed federal income tax return, including all schedules and attachments thereto (e.g., IRS Forms W-2 and Forms 1099), as well as any filings he is required to submit to any state tax or revenue authority, on or before June 30 of each calendar year or as soon thereafter as the same are filed. In the

event Fleyshmakher moves his residence at any time, he shall provide written notice of his new address to the Monitor and the Commission within ten (10) calendar days thereof.

B. Cooperation. Fleyshmakher shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of his Annual Payment. He shall cooperate fully with the Monitor and the Commission in explaining his financial income and earnings, status of assets, financial statements, asset transfers, tax returns, and shall provide any information concerning himself as may be required by the Commission. Furthermore, Fleyshmakher shall provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission.

C. Fraudulent Transfers. Fleyshmakher shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of Fleyshmakher's family or any other person for the purpose of concealing such funds or property from the Monitor or the Commission.

D. Registration With The Commission. Fleyshmakher shall never apply for registration or seek exemption from registration with the Commission in any capacity, and shall never engage in any activity requiring registration or exemption from registration, or act as a principal, agent or officer of any person registered, required to be registered, or exempted from registration; this includes but is not limited to, soliciting, accepting or receiving any funds, revenue, or other property from any person, giving advice for compensation, or soliciting prospective customers, related to the purchase or sale of any commodity futures or options on commodity futures contracts;

E. Public Statements. As stated in Section II, in submitting his Offer, Fleyshmakher neither admits nor denies the findings in this Order. By this language, Fleyshmakher agrees that neither Fleyshmakher nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegations in the Complaint or findings or conclusions in the Order or creating, or tending to create, the impression that the Complaint or the Order is without a factual basis; provided, however, that nothing in this provision affects Fleyshmakher's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Fleyshmakher understands and agrees that the Commission's acceptance of this Offer is conditioned upon his compliance with this agreement. Fleyshmakher will undertake all steps necessary to assure that all of his agents and employees under his authority or control understand and comply with this agreement.

Unless otherwise specified, the provisions of this Order shall be effective on this date. A copy of this Order shall be served on Fleyshmakher at the address set forth in the caption of this Order, on all contract markets, and on the National Futures Association.

By the Commission.

Jean A. Webb
Secretary to the Commodity
Futures Trading Commission

Date: April 4, 2001